

The 77th Legislature: Assessing the Impact

The 77th regular session of the Texas Legislature concluded its business on May 28, 2001 and a number of bills amending the Alcoholic Beverage Code were passed and will become law on September 1, 2001. Following is a complete list of bills that passed and a synopsis of each of them.

HB 269 Provides specific criminal penalties for selling alcoholic beverages without a permit (bootlegging).

HB 337 Requires the commission to cancel or deny renewals of certain original or renewal alcoholic beverage permits or licenses for nonpayment of ad valorem taxes.

HB 402 Abolishes medicinal and physician's permits.

HB 627 Relating to sale of wine by certain holders of a winery permit.

HB 688 Relating to the sale, possession, or consumption of alcoholic beverages near a private or parochial school.

HB 892 Promotes sales of wine by Texas wineries and creates a Texas Wine Marketing Assistance Program within the Texas Department of Agriculture.

HB 1222 Allows the sale of wine for off-premises consumption and to certain local option elections in Southlake and Westlake between Tarrant and Denton Counties.

HB 1612 Allows the commission to accept different forms of payment for permit application fees.

HB 1614 Relating to requirements for the issuance of a food and beverage certificate to certain alcoholic beverage permit or license holders.

HB 1793 Relating to the application of certain alcoholic beverage regulations to the holder of a food and beverage certificate.

HB 1794 Relating to private club alcoholic beverage accounts.

HB 1806 Requires written notice to neighborhoods by certain applicants for original on-premise license and permit holders.

HB 1948 Authorizes a local option election to allow or prohibit the sale of wine by the holder of a winery permit.

HB 1989 Authorizes a judge of a statutory county court to hear certain alcoholic beverage permit or license applications for a county judge.

HB 2331 Increases civil and administrative penalties for making alcohol available to minors.

HB 2810 Updates statutes that classify political subdivisions according to population to reflect changes from the last census.

HB 3016 Allows the use of certain electronically readable information to check for age or for private club membership to comply with certain provisions of the Alcoholic Beverage Code; provides a penalty for misuse of collected information.

SB 377 Relating to a local option election for the sale of beer and wine in certain cities or towns located in more than one county.

SB 965 Relating to sale of wine by the holder of a winery permit.

SB 1127 Allows 50-ml bottles of liquor.

SB 1235 Allows the commission to waive performance bonds for certain alcoholic beverage permit holders and licensees.

SB 1236 Increases the grace period on renewal of an alcoholic beverage license or permit from 10 days to 30 days.

SB 1667 Allows certain records retained for taxation purposes by alcoholic beverage permittees to be kept away from the licensed premises.

SB 1684 Allows the removal of malt liquor, ale, and beer from the premises of a holder of a mixed beverage permit who also holds a brewpub license.

If you have questions about how this applies to you, call your local TABC office in September. ♦

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Texas Driver's Licenses Get New Look

On June 12, 2001, the Texas Department of Public Safety (DPS) unveiled the newly redesigned Texas driver's license and identification card, which includes several added security features and a new vertical format for licensees under 21 years of age.

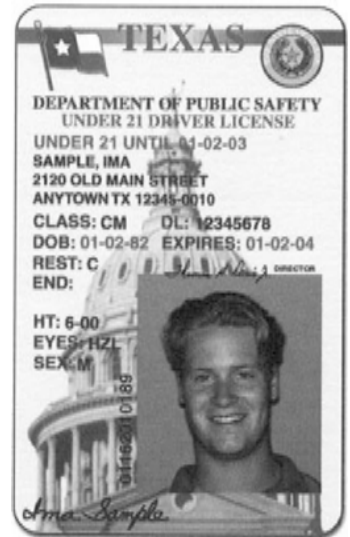
All driver's licenses and ID cards now will have a picture of the state capitol in the background and several new security features to deter fraudulent activity.

"Several of the design changes we've made will make it more difficult to counterfeit these documents," said James B. Francis Jr., chairman of the DPS. "We believe the use of advanced technology will help us better maintain the integrity of our driver's licenses and ID's," he added.

Issuance of the new licenses and ID's will begin this month for walk-in customers, as well as customers who renew by Internet, telephone and mail. Current licenses are valid and will be phased out within the next six years.

DPS also will send out information regarding the new licenses and ID cards to help educate law enforcement officials and merchants.

"We're hopeful the new under 21 design will make it much easier for merchants who sell age restrictive products--like alcohol and tobacco--to identify underage consumers," said DPS Director Col. Thomas A. Davis Jr. "Added security features will provide law enforcement with additional tools to more easily identify counterfeit and altered licenses," noted Col. Davis. ♦



Administrator's Corner



There has been a lot of attention lately on the problem of selling or serving alcohol to underage persons and of the attempts of underage persons trying to purchase alcoholic beverages.

This is obviously a two-phase problem. I don't know any retailers who go out on the streets and grab kids and make them come in and purchase alcohol. Kids are getting smarter and more sophisticated in using fake ID's to attempt to purchase alcohol. However, even though working together to make a difference, we have collectively reduced the problem, there is still a high incidence of minors who are able to obtain alcohol at retail locations.

What can be done about the problem? We cannot sit back and rest assured that the kids are going to stop trying. Other states have passed regulations requiring that all retailers get an ID before the sale of alcohol to any person. Doesn't matter if they are 16 or 66, no ID, no sale. We have some retailers who have voluntarily adopted that standard. Others have changed their format to "over 21 only." This however, does not meet everyone's business plan. There are current safeguards that your trade associations strongly encourage, the chief among them is a state approved seller training program for all of your employees. The new seller training rules require managers to also be seller/server trained. However, unless everyone buys into the program and supports it from the CEO to the lowest clerk, it will not be effective.

In another article, you will

find changes made by the legislature that go into effect in September 2001. One of the bills we supported will allow you to use an electronic scanner to scan Texas driver's licenses that have a magnetic strip on them to check for legal age. We think that this will be a big benefit to all retail establishments whether they are on-premise or off-premises locations. On the other hand, the legislature increased the administrative and criminal penalties for selling alcohol to minors.

The solution to protecting our young people as well as your business is a continued partnership, working together to target this important problem. ♦

Randy Yarbrough
Assistant Administrator

Issue: Private Club Audits

The Compliance Department conducts 400 to 500 audits annually of Private Club Registration Permits. These audits are primarily concerned with compliance issues and with the membership record requirements. However, compliance officers may also conduct investigations into ownership and subterfuge.

A compliance officer will normally call to make an appointment or send a letter one to two weeks prior to visiting the club requesting specific records to review. At times, a compliance officer may come to your premises unannounced. In addition to reviewing records, the officer will also verify that the private club has the ability to provide regular food service to its members.

Usually, the examination of the club's membership records is the most time consuming process of the audit. The areas of analysis include:

- ❖ Is there a legitimate membership committee composed of three or more members of the club?
- ❖ Are written minutes of the membership committee meetings being prepared?
- ❖ Is the membership roster up to date?
- ❖ Is there a well bound membership book, or approved business machine record, of additions and deletions of members?
- ❖ Is there proper recording of preliminary and temporary memberships?
- ❖ Are there a minimum of 50 members?

The membership fee for a Private Club Registration Permit is either based on the highest number of members in good standing during the

permit year, based on a bracket system, or by the club selecting a set fee option.

The club's purchases of alcoholic beverages are also reviewed. The pool beverage replacement is the most popular system, although monthly assessments are still being used by many "country clubs." The replacement system requires:

- ❖ All members must participate equally in the original purchase of all alcoholic beverages.
- ❖ A separate bank account shall be maintained for the pool system.
- ❖ Each service check shall have printed on it the percentage of service charge that is deposited in the account.
- ❖ No money other than the designated percentage may be deposited in the account.
- ❖ The payment for alcoholic beverages may only be made from monies in the replacement account.
- ❖ The club shall maintain a monthly record of all transactions concerning the replacement account.

Other requirements that the compliance officer will review are:

- ❖ Are the club's affairs conducted by a board or executive committee chosen by the members at their annual meeting?
- ❖ How are members' guests allowed to pay for alcoholic beverage services? Guests shall not pay for the service of alcoholic beverages, except as provided for hotels.

Upon completion of the visit, any additional membership fees

which are determined as a result of exceeding the allowable number of members permitted, unapproved preliminary members or temporary members, will be collected in the audit.

If you should have any questions concerning private club record requirements you should contact your local compliance officer. The section of the TABC Code pertaining to private clubs is Title 3, Chapter 32. Private Club Registration Permit, Sec. 32.01. The sections of the TABC Rules are §41.49. Private Clubs-Temporary Memberships, §41.51. Private Clubs-Purchases, and §41.52. Private Clubs-In General. The Code and Rules can be found under the "Legal Information" section of our web site at www.tabc.state.tx.us. ♦

TABC Names New Administrator

On July 9th the TABC named Rolando Garza as the new administrator of the agency. Actually it is a return to the agency for Garza who worked for the TABC for 8 years before taking a job as an Associate Commissioner with the Texas Department of Health a little over a year ago. Garza will begin his new role on August 13, 2001 and becomes the twelfth agency administrator since 1935.

It's Available On-Line!

License/Permit holders can now verify employee Seller Training certification on the TABC web site. Go to the TABC site and then to the Seller Training address at www.tabc.state.tx.us/liccom/seller.

At this web address you will find the following on-line form. A license/permit holder can then type in the necessary information and find out the certification status of their employees. This is important because the information can be accessed 24 hours a day 7 days a week.

Employee Inquiry
1. Retailer, enter your:
License/Permit No: (MB123456)
 (N 123456)
License/Permit Issued Date:
 (mmddyyyy)
2. Next, enter the:
Employee SSN:
 (999999999)
Employee Date of Birth:
 (mmddyyyy)
3. Press
 or
(All fields are required)

For those license/permit holders who do not have access to the Internet, you can still call your local TABC field office or Seller Training in Austin.

To find out the number of your local field office, call one of the Regional Compliance Offices listed below:

Houston	(713) 880-3003
Dallas	(214) 688-1961
Lubbock	(806) 793-3221
San Antonio	(210) 736-4466

To contact Seller Training in Austin, please call (512) 206-3420. ♦



NOTICE

TO ALL SELLER TRAINING SCHOOLS AND TRAINERS

Our TABC enforcement agents are being significantly delayed in investigations because some of our seller training schools are not timely submitting their Reports of Seller Training, Form C-403. These investigations are the result of an employee of a retail establishment being charged with selling alcoholic beverages to a minor or intoxicated person. When an inquiry is made into the TABC computer system, some certified employees are not reported as seller trained since we have not yet received the Form C-403.

TABC Rule § 50.4(o) requires that reports must be delivered or postmarked within 30 calendar days of the date on which the session was held . . . If it is found that your school has failed to timely report a class by not submitting Form C-403, the Compliance Department will prepare and send an administrative case against your school and trainer to our legal department.

At this time, legally, your school has 30 days to submit these reports. We hope that every school will assist us in providing timely information on both retailers for new employees and our enforcement agents by mailing in the Report of Seller Training within one week of each class.

We appreciate your cooperation, as always, in helping make our state a safer place by having all sellers/servers be aware that RESPONSIBLE ALCOHOL SERVICE SAVES LIVES. ♦



New Open Container Law

In passing HB 5 during its 77th Regular Session, the Texas Legislature established the state's first true open container law. Section 2 of House Bill 5 amends Chapter 49 of the Penal Code by adding a Section 49.031. Subsection (b) of that Section specifies that "a person commits an offense if the person knowingly possesses an open container in the passenger area of a motor vehicle that

is located on public highway regardless of whether the vehicle is being operated or is stopped or parked." A later subsection makes an offense under Subsection 49.031 (b) a Class C Misdemeanor, which is punishable by a fine of up to \$500.

The law specifically excludes locked storage containers such as glove compartments and trunks from the definition of a "passenger area of a motor vehicle," and also excludes from that definition "the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk." The law also creates exceptions for those who were passengers in the passenger area of a motor vehicle designed, maintained or used

primarily for the transportation of persons for compensation or who were passengers in the living quarters of a motorized house coach, self-contained camper, motor home, or recreational vehicle.

Citizens should be aware that the act defines "a public highway" as any public roadway, including that roadway's full right-of-way and that the act's definition of an "open container" includes any "bottle, can, or other container that contains any amount of alcohol and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed." ♦

Data Center migrates to WTDROC

Over the weekend of July 13-15, 2001, the agency's IBM mainframe computer system was moved to the West Texas Disaster Recovery and Operations Center (WTDROC) in San Angelo, Texas. The move is part of a statewide outsourcing initiative to consolidate data centers under a single vendor services agreement. The state data center is operated in a cooperative agreement between the Department of Information Resources (DIR) and Northrop Grumman Technical Services, Inc (NGTSI). TABC becomes the latest state agency or university to have moved its mainframe operations to the state data center. Other agencies/universities currently using the data center include Angelo State University, Texas Education Agency, Texas Mental Health/Mental Retardation, Texas Workers' Compensation Commission, and Texas Parks and Wildlife.

The agreement with NGTSI is for a period of six years with the agency retaining such services as print operations, database management support (Model 204), and first level help desk support. Expected benefits from the move include improved operational efficiencies for agency mainframe customers, reduced staffing concerns for IRD, access to services such as disaster recovery and systems programming, and an easier migration track to future computing environments (i.e. Re-engineering project, TexasOnline Portal). ♦

BE ADVISED SURCHARGES INCREASED \$4

All licensees and permittees, except holders of agent's beer license and agent's permit, will be charged an additional \$4 for their license or permit fee and surcharge beginning September 1, 2001. This will affect those permits or licenses who have an issue date of September 1, 2001 and beyond, regardless of when the application is actually submitted.

House Bill 892, of the 77th Legislative Session, requires the TABC to collect this fee and to transfer the monies raised by this additional surcharge to the Department of Agriculture to fund the implementation of the Texas Wine Marketing Assistance Program.

As indicated in the bill, the program is established "to assist the Texas wine industry in promoting and marketing Texas wines and educating the public about the Texas wine industry." The program is charged with organizing a network of package stores to participate in promoting wines produced in Texas, operating a toll-free telephone number concerning wines and their availability, developing marketing plans and promoting wineries in this state. ♦

You Asked . . . questions about alcoholic beverage regulations

Q *We have just acquired a Mixed Beverage Permit for 3 restaurants in which we plan to introduce and test 2 new frozen specialty drinks (a tequila margarita and a rum-based tropical fruit drink). We would like to give free "tastes" (approx. 1 oz. samples) to patrons several evenings a week for at least three weeks. Is this legal? Are there any special record-keeping requirements to account for product used in samples such as these?*

A There is no authorization for what you propose. Section 45.103 of the agency rules having to do with on-premise promotions prohibits giving away free drinks as a general practice. It does allow on a limited basis a retailer to give away free drinks on special occasions such as birthdays or anniversaries. What you propose does not constitute a

"free drink" per se. If the proposal were used on a limited basis as opposed to a regular or long term basis, it will probably be alright because there are pitfalls that could cause you trouble if this practice is not used on a limited basis.

Q *Where can I purchase a wet/dry map for a specific area or county?*

A Unfortunately, our agency does not keep a map that shows the specific boundary lines between the wet and dry areas for Texas counties. However, the County Clerk or City Secretary (depending on if you are in an incorporated area or not) of the area in which you are interested should have a map, as they are the ones who certify to the wet/dry status of businesses wishing to obtain an alcoholic beverage permit.

Allan Shivers, Jr., Chairman
John T. Steen, Jr., Commissioner
Gail Madden, Commissioner
Rolando Garza, Administrator

The *TABC Today* is an external publication of the Texas Alcoholic Beverage Commission. We welcome comments, suggestions and/or questions from our readers. To report a possible violation of the Alcoholic Beverage Code, call toll-free 1-888-THE-TABC (Voice/TDD).

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